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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,641	12/14/2006	Daniel Scheibli	09432.0065	2211
60668 7590 02/13/2008 SAP / FINNEGAN, HENDERSON LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER LINDSEY, MATTHEW S				
ART UNIT		PAPER NUMBER		
4152				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/574,641

**Applicant(s)**

SCHEIBL, DANIEL

**Examiner**

MATTHEW S. LINDSEY

**Art Unit**

4152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 April 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-8 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-893)  
Paper No(s)/Mail Date 04 April 2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

1. Claims 1-8 are pending in this application.

### ***Claim Objections***

2. Claims 7-8 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, Claims 7-8 will be treated as referring to other claims in the alternative only, by treating "according to any one or more of claims 1 to 6" (Claim 7, line 3, and Claim 8, lines 5-6), as "according to any one of claims 1 to 6".

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 7 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "A computer program which is loaded on a computer" is directed to a non statutory class of invention. The claim fails to place the invention squarely within one statutory class of invention. On pages 10 and 12, lines 9-12 (pg 10) and 9-10, 20-22 (pg 12) of the instant specification, applicant has provided

evidence that applicant intends "A computer program which is loaded on a computer" to include a program carrier or signals. As such, the claim is drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim(s) is/are not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefor not a composition of matter.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawata et al. (Pub. No: US 2002/0032777), hereinafter Kawata.

7. With respect to Claim 1, Kawata discloses: "A method for use in a computer system comprising at least one first computer and one second computer (Fig 1, objects 107, and 108, and [0037], lines 6-8), the system for processing consecutive inquiries of an external computer ([0037], lines 4-8), the method comprising: observation of the processing time that the first computer requires for processing a first inquiry of the

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external computer ([0039], lines 1-4), and rerouting of a second inquiry from the first computer to the second computer ([0040], lines 1-5) if the processing time exceeds a standard time ([0067], lines 3-8), the method being characterised in that the standard time is dependent on the type of inquiry ([0044], lines 11-14)".

8. With respect to Claim 2, Kawata discloses: "The method according to claim 1, wherein the standard time is dependent on the configuration of the first computer ([0039], lines 1-4 and [0070], lines 1-15, where depending on the processing power of the server, the load evaluation levels differ)".

9. With respect to Claim 3, Kawata discloses: "The method according to claim 1, wherein the processing time is determined relative to a quantity of data ([0044], lines 11-14)".

10. With respect to Claim 4, Kawata discloses: "The method according to claim 1, wherein the processing times of consecutive inquiries are taken into account during observation ([0040], lines 1-5, where the server with the lightest load is selected, hence the server that is processing the least intensive previous inquiries)".

11. With respect to Claim 5, Kawata discloses: "The method according to claim 1 by using a management program with the modules: observer for observation ([0039], lines 1-4) and rerouter for rerouting ([0040], lines 1-3)".

12. With respect to Claim 6, Kawata discloses: "The method according to claim 1, wherein the steps of observation and rerouting are induced by a management program within the system ([0038], lines 1-5)".

13. With respect to Claim 7, Kawata discloses: "A computer program which is loaded on a computer and which induces a computer system to execute a method according to any one or more of claims 1 to 6 ([0037], lines 1-9)".

14. With respect to Claim 8, Kawata discloses: "A computer system comprising at least one first computer and one second computer (Fig. 1, objects 107, 108, and [0037], lines 5-8) for processing consecutive inquiries from an external computer ([0037], lines 4-8), wherein the computer system executes a method according to any one or more of claims 1 to 6 ([0037], lines 4-15)".

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Tobe et al. (Patent No: US 5,778,224) teaches executing a plurality of transactions on a distributed system.

- b. Yu (Patent No: US 6,078,943) teaches a method for geographically distributed servers to handle client requests.
- c. Takahashit et al. (Patent No: US 6,259,705) teaches a network sever load balancing technique.
- d. Brendel et al. (Patent No: US 5,774,660) teaches a load balancing technique based on resources available.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW S. LINDSEY whose telephone number is (571)270-3811. The examiner can normally be reached on Mon-Thurs 7:30-5, Alternate Fridays 7:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nabil El-Hady can be reached on (571) 272-3963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MSL  
1/30/2008

/Nabil El-Hady/  
Supervisory Patent Examiner, Art Unit 4152